IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 11094 of 2003

Between:

1 Guthi Hymavathi,w/o.P.Samasiva Rao, Priyavasavi Nilayam,main Road,Jandrapet, Prakasam dt
2 Ankisetty Naga Sai,w/o.P.Veerabhadra Rao,Jandrapet,Prakasam

3 Sankham Sarada, w/o.R.Koteswar Rao, Prasad Nagar,Near V.R.S.& Y.R..N.College, Chirala ,Prakasam dist
4 Bandaru Prabhavathi,w/o.N.Koteswar Rao, Jandrapet,Chirala Mandal,Prakassam Dist
5 Gutti Madhavi,w/o.z.Sudhakar Rao,Andrape Chirala Mandal,Prakasam Dist
6 Gutti Siva Sankar,s/o.Heramba Rao, Jandrapet,Chirala Mandal,

Prakasam District.
7 Yarram Raja Kumari,w/o.Ch.Prabhakar Reddy,Yadavapalem,
Near Gangamma Temple,Chirala,Prakasam

..... PETITIONERS

and

1 Commissioner and Director of School Education, govt.of AP,.Hyderabad
2 The Regional Joint Director,Guntur
3 Dist.Educational Officer,Prakasam Dist Ongole
4 B.V.B..Boys High School and BGBK Girls High School,Adrapeta,Chirala Mandal, Prakasam dist.rep.by its secry,and
correspondent B.Krishna.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Mandamus directing the respondents to absorb the petitioner into the vacant aided

posts in the fourth respondent school from the date such posts have fallen vacant and also declare the action of the fourth respondent in filling up the vacant aided posts by direct recruitment as notified in “Eenadu” Telugu Daily Newspaper dated 16.5.2003 as illegal, null void and contrary to A.P.Education Act and the Rules made there under.

Counsel for the Petitioner: MR.M.S.PRASAD

Counsel for the Respondents: Mr.L.Ravichander, GP for

School Education.

The Court made the following :

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION NO.11094 OF 2003

ORDER:

The petitioners are working in various teaching and non-teaching posts in the fourth respondent School. They were appointed in 1988 in unaided posts. The appointment of the petitioners 1 to 5 was approved by the District Educational Officer vide his proceedings in R.C.No.79/B2/95, dated 7.9.1995 in unaided posts. The selection and appointment of the petitioners 6 and 7 were also sent to the approving

authority for approval in unaided vacancies in accordance with Rule 12(6) of The Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 issued under G.O.Ms.No.1 Education (P.S.2), Dated 1.1.1994. The petitioners submit that certain aided posts were fell vacant in the fourth respondent School, but without considering the claims of the petitioners for absorption to the vacant aided posts, the fourth respondent has issued a notification to fill up the vacant aided posts by direct recruitment, which was published in Eenadu Telugu daily newspaper dated 16.5.2003. Aggrieved by the said action of the fourth respondent, petitioners filed this writ petition to direct the respondents to absorb them into the vacant aided posts in the fourth respondent school from the dates on which such posts fell vacant.

Respondents 1 to 3 have filed counter admitting that the selection and appointment of the petitioners 1 to 5 was approved under unaided posts by the proceedings of third respondent dated 7.9.1995 and the selection and appointment of the petitioners 6 and 7 were also sent for approval. It is further admitted that whenever the aided vacancies fell vacant, the persons who are working in the approved unaided vacancies are eligible for absorption into aided vacancies in accordance with their seniority, if they possess the requisite qualification required for that particular post. It is also further stated that even as per the clarifications issued by the Government in G.O.Ms.75 dated 23.9.2002, the petitioners who were appointed against the sanctioned unaided approved posts are entitled for absorption. It is further admitted that the fourth respondent management did not sent proposals for absorption till date except with regard to the first petitioner seeking absorption in the aided posts. Until the management sends proposals for absorption, the office of respondents cannot consider the grievance of the petitioners for their absorption in the vacant aided posts. The writ petitioners are also entitled as per the orders of the Government in G.O.Ms.75 dated 23.9.2002 for their absorption in unaided posts and the petitioners are eligible for the aided salary after their absorption into aided posts after approval by the competent authority.

The fourth respondent filed a counter stating that B.V. & B.N. High School committee established B.V. & B.N. High School in 1962 and over the period the said school earned good reputation and the school management thought it necessary to bifurcate the school in two establishments, one for boys and one for girls and accordingly the school was bifurcated in the year 1988 by constituting B.V. & B.N.

Boys High School and B.G. & B.K. Girls High School and the same was recognized by the Government vide G.O.Ms.No.702, dated 23.4.1994. The management recruited teachers to satisfy the required teacher-student ratio. The first respondent also sanctioned certain posts to the boys school as per the strength. The management wanted the approval of all the recruited posts to be admitted to grant-in-aid posts, but the Government did not accept the claim of the management to admit certain posts to grant-in-aid posts. Therefore, the management filed writ petition vide W.P.No.20563 of 1995, which was allowed on 20.8.1999 against which the Government filed Writ Appeal No.813 of 2000 and the said writ appeal was disposed of directing the Government to consider the absorption of candidates in accordance with law. Therefore, recommendations have been made in favour of the applicants for their absorption into grant-in-aid posts. Some of the teachers were not considered for recruitment against fresh notification so that their long years of service, they have put in the school, would not go waste and they would have benefit of retrospective regularization. It is also admitted that the appointment of petitioners 1 to 5 was approved by the third respondent and the regularization of petitioners 6 and 7 is under consideration for approval of the third respondent. There is no dispute that all the petitioners are working in the unaided posts for quite a long time and they are entitled to be absorbed in the vacant aided posts as per their seniority.

By way of additional affidavit, the petitioners have furnished the particulars of the teachers who have retired or promoted and due to which certain vacancies fell vacant entitling the petitioners for their absorption into the vacant grant-in-aid posts. The said particulars are furnished as follows:

S.No. Name of the retired/ Date of retirement/ Name of the

Promoted teachers promotion. Present eligible

Candidates

1. Sri A.Subramanya Rtd.30.6.1996 G.Hymavati,Bsc.,

Sarma M.A.,B.Ed Physical

Sciences, B.Ed Asst,

Working as B.Ed

Asst since 13.6.88

2. SriP.Kotaiah Babu Rtd.30.6.2002 A.Nagasai, Bhasha

Telugu Grade II pandit Pravena T.P.T.

Working as Grade II

Telugu Pandit since

01.12.1988

3. Sri P.Suseela Rtd.30.6.2002 Sankam Sarada

Craft Instructor working as sewing instructor since

13.6.1988

4. Sri V.Kamala Kumar promoted on Gutti Madhavi

Record Asst. 22.3.1995 working as Record

Promoted as SGBT Assistant since

On 22.3.1995 13.6.1988

5. Sri B.Basavewara promoted on Bandaru Prabavati

Record Asst. 01.01.1998 working as Record

Promoted as SGBT Asst. since

on 01.01.1998 13.6.1988

6. Sri K.Anjaneyulu promoted on Gutti Sivasankar

promoted as SGBT 04.09.1998 selected as SGBT

B.Ed Asst. in the unaided post

In the year 2000 by

the Competent

authority.

7. Sri B.Venkata Rao promoted as HM Y.Raja Kumari

Maths Asst. on 01.07.2001 selected as B.Ed

Promoted as HM Asst. (unaided)

In the year 2000

By the competent

Authority.

It is further stated that in the year 1997, consequent to the arising of vacancies in the aided posts, the management absorbed petitioner No.1 and another into grant-in-aid posts with effect from 01.07.1996, i.e., when the aided post fell vacant. The correspondent of the fourth respondent school issued absorption orders in the year 1997 and the same were communicated to the respondent No.3 for necessary ratification through the Deputy District Education Officer, Parchur, who in turn has recommended the same vide his letter dated 15.12.1997. The respondent No.3 by his proceedings dated 19.3.1998 addressed to respondent No.2, requested him to ratify the action taken by the correspondent of the B.V. & B.N. High School, Jandrapet in absorbing the teachers working in the unaided post into aided post and to issue early orders. So far no orders have been passed by the respondent No.2.

The learned counsel appearing for the petitioners submit that they are entitled for absorption from the date on which the aided post fell vacant as they are senior most persons in that category having entitled for absorption in the aided posts and in fact the respondents have also accepted the entitlement of the petitioners for their absorption to the aided vacant posts.

Insofar as filling up of the vacant aided posts by direct recruitment is concerned, the fourth respondent has accepted that without absorbing the petitioners they are not going to fill up the vacant aided posts by direct recruitment and only after considering the case of the petitioners for their absorption, they will resort for the direct recruitment in respect of other left over aided posts.

Having regard to the facts and circumstances of the case and in view of the legal entitlement of the petitioners for their absorption in the aided posts, the fourth respondent is directed to send the proposals of the petitioners for their absorption into the vacant aided posts if not already sent within three weeks from the date of receipt of a copy of this order and on submission of such proposals for absorption of the petitioners into existing vacant aided posts, the respondents 1 to 3 are directed

to consider and pass appropriate orders for absorption of the petitioners into existing vacant aided posts keeping in view their seniority and pass appropriate orders within three weeks from the date of receipt of the proposals from the fourth respondent.

The writ petition is accordingly allowed. No order as to costs.

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(V.ESWARAIAH,J)

DT.6.10.2004.

Mdaa/rkk

Copy to:

1 Commissioner and Director of School Education, govt.of AP,.Hyderabad
2 The Regional Joint Director,Guntur
3 Dist.Educational Officer,Prakasam Dist Ongole
4 B.V.B..Boys High School and BGBK Girls High School,Adrapeta,Chirala Mandal, Prakasam dist.rep.by its secry,and correspondent B.Krishna.

5. Two C.Cs to G.P. for School Education, High Court of A.P., Hyderabad(OUT)

6. Two C.D.copies.